IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

OP.No. 37334 of 2002(T)

PETITIONER:

C.U.ABRAHAM, S/O. ULAHANNAN,
CHENNATTUKUZHIYIL HOUSE, PIRAVOM.

BY ADV. SRI.K.SURENDRA MOHAN

RESPONDENTS:
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1. THE ASSISTANT EXCISE COMMISSIONER,
MALAPPURAM.

2. THE ADDITIONAL EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

3. THE COMMISSIONER OF EXCISE, KERALA,
THIRUVANANTHAPURAM.

4. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SMT.SMITHA, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 37334/2002

ORDER ON CMP NO. 63134/2002 IN O.P.No. 37334/2002

DISMISSED.

15/03/2007. SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF REGISTRATION CERTIFICATE PARTICULARS OF VEHICLE DATED 29/11/97 ISSUED BY THE REGISTERING AUTHORITY.

EXT.P2 COPY OF SEIZURE MAHZAR DATED 18/11/97.

EXT.P3 COPY OF SHOW CAUSE NOTICE DATED 02/08/99 ISSUED BY THE 1ST RESPONDENT.

EXT.P4 COPY OF PETITIONER'S REPRESENTATION DATED 16/8/99 TO THE 1ST RESPONDENT.

EXT.P5 COPY OF ORDER NO.M3-4575/97 DATED 16/5/2000.

EXT.P6 COPY OF ORDER NO.15/SPL/2000/ACX DATED 02/12/2000 OF THE 2ND RESPONDENT.

EXT.P7 COPY OF PETITIONER'S REVISION PETITION DATED 28/12/2000 to the 3RD RESPONDENT.

EXT.P8 COPY OF ORDER NO.XA5-35714/2000 DATED 28/9/2002 SERVED ON THE PETITIONER ON 05/11/2002.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 37334 of 2002 T

Dated, this the 15th day of March, 2007

J U D G M E N T

Petitioner is challenging Ext.P8 order whereunder the Government rejected the revision petition filed against the order in appeal confirming confiscation of petitioner's lorry bearing Reg. No. KBE 7498 under Sec. 67B of the Abkari Act. The vehicle was seized with 457.890 litres of Indian Made Foreign Liquor without any document on 17/11/1997. The driver ran away and could not be arrested. According to the petitioner who is the registered owner, the driver was engaged on temporary basis and petitioner has no involvement in the abkari offence. However, scope of interference by this Court in this matter is quite limited because in the three level proceedings provided under the statute, all the authorities concurrently found against the petitioner. In fact Sec. 67B authorizes confiscation of any vehicle or asset involved in the abkari offence unless the case falls within the exception provided under Sec. 67(C)(2). The petitioner's vehicle was seized when it was transporting liquor for sale and the quantity

involved is substantial. The only escape for the petitioner is to prove that he had taken sufficient measures to prevent use of the vehicle for transport of illicit liquor as provided under Sec. 67C(2) of the Act. Petitioner has not even explained as to where the vehicle was sent, whose goods it was to carry, the transport was from where to where, which only show that the driver was allowed to use the vehicle for whatever purposes he wanted. I therefore find that petitioner has not discharged his burden under Sec. 67 C (2) of the Act. In the circumstance, the impugned orders are upheld and I do so. However, the learned counsel for the petitioner contended that petitioner is a very old person and was never before involved in any abkari offence and further the petitioner was allowed to use the vehicle for nearly 10 years from the date of seizure on petitioner furnishing bank guarantee for Rs. 90,000/-. The statute does not provide for recovery of original cost of vehicle and the provision is to take over possession of it and sell it. Needless to mention that Government will not get even half of the bank guarantee amount if vehicle is recovered and sold now because the vehicle is now

quite old as petitioner was allowed to use it roughly for 10 years after vehicle was involved in abkari offence. In the circumstance, I direct the respondent to release the bank guarantee to the petitioner on petitioner depositing Rs. 50,000/- (Rupees fifty thousand only) towards present value of vehicle, which should be paid on or before 31/03/2007. On payment as above on or before 31/03/2007 in Government Treasury the bank guarantee shall be released to the petitioner treating confiscation as notional and allow petitioner to retain the vehicle, failing which bank guarantee can be encashed.

This original petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg